

**RESOLUTION 2015-30**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MODESTO  
DETERMINING GENERAL PLAN CONSISTENCY AND RECOMMENDING TO  
THE CITY COUNCIL APPROVAL OF ZONING ORDINANCE TEXT  
AMENDMENT AMENDING MODESTO MUNICIPAL CODE SECTION 10-2.152,  
“MARIJUANA DISPENSARIES,” SECTION 10-3.101, “LAND USE TABLE,” AND  
SECTION 10-3.210 “MEDICAL MARIJUANA USES” OF THE MODESTO  
MUNICIPAL CODE**

**WHEREAS**, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”); and

**WHEREAS**, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

**WHEREAS**, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as “The Medical Marijuana Program” or “MMP”), to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances; and

**WHEREAS**, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement’s ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

**WHEREAS**, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary care givers; and

**WHEREAS**, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing or processing medical marijuana; and

**WHEREAS**, in *City of Riverside v. Inland Empire Patients Health and Wellness Center*,

*Inc.* (2013) 56 Cal.4<sup>th</sup> 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...”. Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4<sup>th</sup> 975, the Court of Appeal held that “there is no right-and certainly no constitutional right-to cultivate medical marijuana...”. The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

**WHEREAS**, in October of 2015 the State of California enacted AB 243, AB 266, and SB 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the “MMRSA”). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and state-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing or processing medical marijuana; and

**WHEREAS**, the limited immunity from specified state marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

**WHEREAS**, the MMRSA contains language that requires a city to have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise, under the principles of permissive zoning, enacted by March 1, 2016. If said regulations or ordinances are not enacted by March 1, 2016, the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

**WHEREAS**, the City desires by the adoption language of this Ordinance, to retain the authority to regulate or prohibit cultivation and delivery of marijuana, and not to cede that authority solely to the State; and

**WHEREAS**, the proposed Zoning Ordinance text amendment seeks to retain local control by prohibiting commercial marijuana or medical marijuana activity, including dispensaries and commercial cultivation in all zoning districts in the City of Modesto; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on December 21, 2015, at which time it considered all evidence presented, both written and oral, and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance with modifications as discussed; and

**WHEREAS**, the City Council will hold a duly noticed public hearing on this Ordinance on January 12, 2016, at which time it will consider all evidence presented, both written and oral; and

**WHEREAS**, improper medical marijuana cultivation poses an environmental health risk to the public and may create a public nuisance, including without limitation, offensive and irritating odor, degradation of air quality, excessive noise, risk of criminal activity, improper

and/or dangerous electrical alterations, and impairment of the general quality of life of property owners and occupants adjoining medical marijuana cultivation sites; and

**WHEREAS**, pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, the California Court of Appeal decision in *Maral v. City of Live Oak* (2013) 221 Cal.App.4<sup>th</sup> 975, the California Supreme Court decision of *Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4<sup>th</sup> 729, and the City of Modesto's Municipal Code, the City has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety and welfare of its residents and community. And, pursuant to Government Code section 38771, the City has the power, through its City Council, to declare actions and activities that constitute a public nuisance; and

**WHEREAS**, the justifications for regulating or banning of outdoor medical marijuana cultivation pursuant to the City's police power include, but is not limited to: a) the increased risk to public safety, based on the value of visible marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; b) the strong fumes that are emitted from marijuana plants which can interfere with the use and enjoyment of neighboring properties by their occupants; c) the potential for theft and use by school age children where marijuana is cultivated in a visible location; and d) the cultivation of medical marijuana can also result in various code violations and impairments of the general quality of life for property owners and occupants near adjoining medical marijuana cultivation sites. These secondary effects pose serious safety risks, and require the commitment of scarce police and public resources; and

**WHEREAS**, the Planning Commission finds that the public health, safety and general welfare of the City and its residents necessitates and requires the adoption of the proposed Ordinance regulating marijuana within the City in order to : a) retain local control under the provisions of the MMRSA; b) protect and safeguard against the detrimental secondary negative effects and adverse impacts of unregulated and unrestricted cultivation of marijuana within the City; c) preserve and safeguard the minors, children and students in the community from access to marijuana cultivation areas; and d) preserve the City's law enforcement services, in that monitoring and addressing the negative secondary effects and adverse impacts will likely burden the City's law enforcement resources.

**WHEREAS**, the City must balance the public health, safety and general welfare concerns of its citizens with the legitimate medical needs of qualified patients by providing an exemption for qualified patient or primary caregiver cultivation and allows small personal cultivation as a permitted use in residential zoning districts, including commercial or office zones where dwellings are located in the City.

**WHEREAS**, the proposed Zoning Ordinance text amendment balances the public health, safety and general welfare concerns of its citizens with the legitimate medical needs of qualified patients by providing an exemption for qualified patient or primary caregiver cultivation and allows small personal cultivation as a permitted use in residential zoning districts, including commercial or office zones where dwellings are located in the City; and

**WHEREAS**, the public hearing for proposed Zoning Ordinance text amendment has been properly noticed by placing a newspaper ad in *The Modesto Bee* and posting the notice at public places, the City of Modesto City Hall Bulletin Board, the City website and in a local newspaper of general circulation ten (10) days prior to the meeting; and

**WHEREAS**, the adoption of this proposed Zoning Text amendment is exempt from California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it limits currently permitted activities and does not authorize the construction of any new structures or other physical changes to the environment.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The Planning Commission recommends to the City Council approval of the attached Ordinance [ as shown in Exhibit “A” (draft City Council Ordinance Amending Section 10-2.152, “Marijuana Dispensaries,” Section 10-3.101, “Land Use Table,” and Section 10-3.210 “Medical Marijuana Uses” of the Modesto Municipal Code) with modifications to the proposed Ordinance at Section 10-3.210 (b)(1)(d) to be read as follows:

“Marijuana may only be cultivated in dwelling units located in zones where residences are allowed as permitted or conditionally permitted uses and only on a parcel on which a residential dwelling is located.”

The Planning Commission also recommends modifying Section 10-3.101 of the Land Use Table to reflect the modifications to Section 10-3.210(b)(1)(d) and eliminating specific identification of R-1, R-2, R-3, P-O, C-1, C-2 and C-3; and

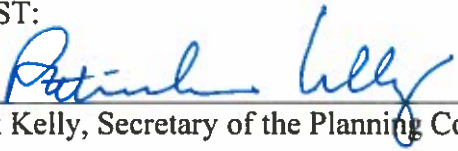
2. The proposed Zoning Ordinance amendment is consistent with the Modesto General Plan, III.C.1.b.1 which states “The requested zone change is required by public convenience or necessity.” The proposed Zoning Ordinance text amendment is also consistent with the City of Modesto General Plan in that the General Plan, its objective, policies and goals do not permit or contemplate outdoor marijuana cultivation or unregulated indoor cultivation. Specifically, the proposed Ordinance is consistent with Policy V.J.3.b. which reads: “[t]he City of Modesto Police Department should strive to reduce the level of crime below levels of other progressive departments with comparable populations and demographics,” because the purpose of the proposed Ordinance is to combat the potential for increased crime associated with unregulated marijuana cultivation.

The foregoing resolution was introduced and moved for adoption on December 21, 2015, by Commissioner Escutia-Braaton, and being duly seconded by Commissioner Smith, was passed by the following vote:

AYES: Commissioner Escutia-Braaton, Commissioner Morad, Commissioner Smith,  
Commissioner Tyler  
NOES: Chair Carter, Commissioner Lucas

ABSENT: None  
ABSTAIN: None

ATTEST:

  
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Patrick Kelly, Secretary of the Planning Commission